

METROPOLITAN CONTRACT NO. _____

CONSTRUCTION CONTRACT BETWEEN THE
METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY AND

FOR

Tier II Roadway & Infrastructure Projects

RFP #10-45

TABLE OF CONTENTS

INTRODUCTION	3
1. DOCUMENTS INCORPORATED BY REFERENCE	3
2. REPRESENTATIONS OF THE CONTRACTOR.....	3
3. NON-DISCRIMINATION	4
4. ETHICAL STANDARDS	4
5. PREVAILING WAGE RATE	4
6. INTENT AND INTERPRETATION	5
7. OWNERSHIP OF PROPERTY.....	6
8. CONTRACTOR'S PERFORMANCE	6
9. TIME FOR CONTRACTOR'S PERFORMANCE AND LIQUIDATED DAMAGES	7
10. COMPENSATION.....	8
11. INFORMATION AND MATERIAL SUPPLIED BY THE METROPOLITAN GOVERNMENT	12
12. CEASE AND DESIST ORDER	12
13. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR	12
14. HAZARDOUS MATERIALS AND WASTE	15
15. INDEMNITY.....	15
16. THE PROJECT ARCHITECT/ENGINEER	15

17. CLAIMS BY THE CONTRACTOR	16
18. SUBCONTRACTORS	17
19. CHANGE ORDERS.....	18
20. RESERVED	20
21. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.....	20
22. TERMINATION BY THE CONTRACTOR	21
23. THE METROPOLITAN GOVERNMENT'S CONTRACTOR'S RIGHT TO SUSPEND PERFORMANCE.....	21
24. TERMINATION BY THE METROPOLITAN GOVERNMENT	21
25. INSURANCE	23
26. SURETY BONDS	23
27. PROJECT RECORDS.....	23
28. APPLICABLE LAW/VENUE	24
29. SUCCESSORS AND ASSIGNS.....	24
30. INTELLECTUAL PROPERTY	24
31. NOTICES	25
32. METROPOLITAN GOVERNMENT PROPERTY	25
33. MODIFICATION OF CONTRACT	25
34. PARTNERSHIP/JOINT VENTURE	25
35. WAIVER	26
36. ENTIRE CONTRACT	26
37. FORCE MAJEURE.....	26
38. SEVERABILITY	26
39. DISPUTE RESOLUTION	26
40. CONTRACTOR'S LICENSE	26
41. AMERICANS WITH DISABILITIES ACT	27
42. ADDITIONAL NON-DISCRIMINATION	27

43. ATTORNEY FEES	27
44. SIGNATURES	28

INTRODUCTION

This Construction Contract ("Contract") is made and entered into as of the Effective Date hereafter set out by and between The Metropolitan Government of Nashville and Davidson County, a governmental, municipal and public corporation created and existing under and by virtue of the Constitution and laws of the State of Tennessee (hereinafter "Metropolitan Government"), and _____, hereinafter "Contractor").

The design and construction services required by the Metropolitan Government in this Contract are to be rendered for the construction project known as, Tier II Roadway & Infrastructure Projects (the "Project").

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements stated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Metropolitan Government and the Contractor agree as follows:

1. DOCUMENTS INCORPORATED BY REFERENCE

The Contract includes this document; Contractor's Proposal, including General Conditions/Overhead Costs, Cost Breakdown Summary in 16 Division format (to be determined); Ethical Standards Affidavit; Drug-Free Workplace Affidavit; Prevailing Wage Rate (to be determined); Contractor's Payment Request; Change Order Document; Insurance Requirements and Certificate of Insurance; Contractor's Performance Bond; Contractor's Payment Bond; Guidelines for Assistance to Small Business; all of which are hereby incorporated herein by reference and made a part hereof. Change Orders issued hereafter and any other amendments executed by the Metropolitan Government and the Contractor shall become and be a part of this Contract. Documents not included or expressly contemplated in this Paragraph 1 do not, and shall not, form any part of this Contract.

2. REPRESENTATIONS OF THE CONTRACTOR

In order to induce the Metropolitan Government to execute this Contract and recognizing that the Metropolitan Government is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the Metropolitan Government:

- (A) The Contractor is fully qualified to act as the contractor for this Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the designer and builder for the Project;
- (B) The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;
- (C) The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract and has found them to be generally sufficient to indicate and convey understanding of the terms and conditions for constructing and completing the Project; and the Contractor further agrees to notify the Architect/Engineer immediately of all conflicts, errors, ambiguities, or discrepancies that are discovered in the contract, including, but not limited to the Plans and Specifications.

- (D) The Contractor had access to the site for examinations, explorations, tests and studies prior to submitting Contractor's Proposal, and relied exclusively upon the Contractor's own estimates and investigations and other data which was necessary for full and complete information upon which the Contractor's Proposal was based; in addition to the representations contained in the Contractor's Proposal.

3. NON-DISCRIMINATION

The Contractor is prohibited from discriminating against any individual due to race, creed, color, national origin, age or sex and from violating any applicable laws concerning the employment of individuals with disabilities. It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this Contract, Contractor certifies and warrants it will comply with this policy.

4. ETHICAL STANDARDS

(A) It shall be a breach of ethical standards for any person to offer, give or agree to give any Metropolitan Government employee or former Metropolitan Government employee, or for any Metropolitan Government employee or former Metropolitan Government employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

(B) It shall also be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(C) It shall also be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or to secure a contract with the Metropolitan Government upon the agreement or understanding for a contingent commission, percentage or brokerage fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(D) The Contractor affirms that it has not retained anyone in violation of this Subparagraph 4. A breach of ethical standards is a material breach of this Contract and could result in civil or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under contracts with the Metropolitan Government.

(E) Contractor shall execute the Ethical Standards Affidavit attached hereto.

5. PREVAILING WAGE RATE

Contractor shall not pay less than the prevailing wage rate for all types and classifications of any future work performed under this Contract, such rates being those established for Davidson County by the United States Department of Labor under 42 U.S.C. § 276 (a) (Davis-Bacon Act). A copy of the prevailing wage rates will be included in future procurements. The prevailing wage rates must be posted at the Project job site. Failure to pay the prevailing wage rate is a material breach of this Contract.

6. INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Metropolitan Government and the Contractor agree as follows:

(A) The Contract constitutes the entire and exclusive agreement between the parties with reference to the Project and supersedes any and all prior discussions, communications, representations, understandings, negotiations or agreements. This Contract also supersedes any Proposal documents except those specifically incorporated in Paragraph 1;

(B) Unless specifically stated to be the responsibility of the Metropolitan Government, anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.

(C) Nothing contained in this Contract shall create, or be interpreted to create, privity or any other relationship whatsoever between the Metropolitan Government and any entity except the Contractor;

(D) Whenever a word, term or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(E) The words "include", "includes" or "including", as used in this Contract shall be deemed to be followed by the phrase, "without limitation";

(F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;

(G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings and other submittals and shall give written notice to the Metropolitan Government and the Architect/Engineer of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval of the Metropolitan Government or the Architect/Engineer of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Metropolitan Government has requested the Architect/Engineer to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction; and,

(H) In the event of any conflict, discrepancy or inconsistency among any of the documents which make up this Contract, the following shall control:

(1) As between figures given on plans and scaled measurements, the figures shall govern;

(2) As between large scale plans and small scale plans, the large scale plans shall govern;

(3) As between plans and specifications, the requirements of the specifications shall govern;

- (4) As between this document and the plans or specifications, this document shall govern.
 - (5) Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. When there are discrepancies between the indicated sum of any column of figures and the correct sum thereof, the Metropolitan Government has the right, at its option, to reject the Bid or to accept the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- (I) The words "fee" and "profit", as used in this Contract, shall be interchangeable and shall mean that portion of the Contract Price over and above the direct and indirect Cost of the Work and General Conditions Cost.

7. OWNERSHIP OF PROPERTY

The following shall remain the property of the Metropolitan Government:

- (A) All documents which make up this Contract as set forth in paragraph 1;
- (B) All other documents furnished by the Metropolitan Government;
- (C) All shop drawings and other submittals by Contractor;
- (D) All other original works of authorship, whether created by the Metropolitan Government Architect/Engineer or Contractor embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two dimensional works, and three dimensional works.

The Contractor shall have the right to keep one (1) copy of the aforementioned documents upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion of the aforementioned on other projects without the Metropolitan Government's prior written authorization.

8. CONTRACTOR'S PERFORMANCE

The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- (A) Construction of the Project
- (B) Construction Services consisting of the provision and the prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary building permits and other permits required for the construction of the Project, including any use and occupancy or similar permit(s) that may be required before the completed Project may be put in use;
- (C) The furnishing and maintenance of any required surety bonds and insurance; and
- (D) The creation and submission to the Metropolitan Government, bound in hardback notebooks, of five (5) sets of all manuals, operating instructions, bonds, warranties, guarantees, maintenance instructions, et cetera, and one set of detailed and comprehensive reproducible mylar as-built drawings depicting all as-built construction. Said

as-built information shall be submitted to the Metropolitan Government upon final completion of the Project and receipt of same by the Metropolitan Government shall be a condition precedent to final payment to the Contractor.

9. TIME FOR CONTRACTOR'S PERFORMANCE AND LIQUIDATED DAMAGES

- (A) The Contractor shall commence the performance of this Contract ("Commencement of Work Date") within To Be Determined (TBD) for future projects, calendar days after the date of issuance to Contractor of a Notice to Proceed by the Metropolitan Government, however, in no event shall the Notice to Proceed be issued or performance commence prior to the Effective Date of this Contract as hereafter set out. Once timely commenced, Contractor shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project within TBD calendar days after the date that the Notice to Proceed is issued. The Contractor shall accomplish Final Completion of the Project within TBD calendar days after the date that Substantial Completion is accomplished. *To be filled in after contract negotiations.
- (B) The term "Substantial Completion" as used herein shall mean that point at which the Project is at a level of completion in strict compliance with this Contract such that the Metropolitan Government or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete and such partial use or occupancy shall not be evidence of Substantial Completion. The term "Final Completion" as used herein shall mean that point at which the Project is 100% complete and in conformance with the Contract.
- (C) Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion.
- (D) The Metropolitan Government will suffer financial loss, in addition to any increased costs of completion of the Project, if the project is not Substantially Complete within the time allowed. Contractor and Contractor's Surety shall be liable for and shall pay to the Metropolitan Government as liquidated damages to compensate for the loss of use of the Project for the period of delay, and not as penalty, the sum of **TBD** for each calendar day of delay until the Project is Substantially Complete. Such liquidated damages do not include any additional costs of this Project caused by delay (such as additional costs of construction, additional architect or engineer fees or other liquidated costs) and Contractor, in addition to liquidated damages for the cost of delay itself, shall be liable to the Metropolitan Government for same. Contractor agrees that the contract time and the amount established by this Paragraph for liquidated damages are reasonable.
- (E) The Metropolitan Government will suffer financial loss, in addition to any increased costs of completion of the Project, if the Contractor fails to achieve Final Completion within the time period set forth in Paragraph 9A. Contractor and Contractor's Surety shall be liable for and shall pay to the Metropolitan Government as liquidated damages to compensate for the losses and damages suffered by any delay, and not as penalty, the sum of **TBD** for each calendar day of delay until the Project is finally complete. Such liquidated damages do not include any additional costs of this Project caused by delay (such as additional costs of construction, additional Architect/Engineer fees or other liquidated costs) and Contractor, in addition to liquidated damages for the cost of delay itself, shall be liable to the Metropolitan Government for same.
- (F) All limitations of time set forth herein are material and are of the essence of this contract.

10. COMPENSATION

- A) The Metropolitan Government shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of all its obligations hereunder, the contract price of \$ TBD. The price set forth in this Subparagraph 10(A) shall constitute the Contract Price, which shall not be modified except as provided in this Contract. Contractor agrees that the contract price is subject to upward or downward revision to reflect variation in expected quantities of unit priced work, use of allowances, increases and decreases in the scope of work and other changes contemplated by and made in accordance with the terms of this Contract. Notwithstanding any other provision of this Contract, Contractor is not guaranteed to earn any minimum amount of compensation. Rather, the total amount of compensation Contractor may earn under this Contract shall be based on the total number of authorized and approved units of work performed.
- (B) Within TBD calendar days of the Effective Date of this Contract, the Contractor shall prepare and present to the Metropolitan Government the Contractor's Schedule of Values, including a complete detailed breakdown of General Conditions and Fee, apportioning the Contract Price among the different elements of the Project, for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in a format acceptable to the Metropolitan Government, with such detail and supporting information as the Metropolitan Government requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been approved in writing by the Metropolitan Government.
- (C) The Metropolitan Government shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Paragraph. On or before the tenth (10th) day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending on the last day of the prior month. Said Payment Request shall be submitted in the form attached hereto as (Contractor's Payment Request). Therein, the Contractor may request payment for ninety five percent (95%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if off site storage is in a bonded warehouse approved in writing by the Metropolitan Government), less the total amount of previous payments received from the Metropolitan Government.

Any request for payment on account of stored materials or equipment, whether on or off site, must be accompanied by written proof that the Metropolitan Government will receive free and clear title to such materials or equipment once payment is made, a bill of materials, and that they are fully insured by Contractor against loss or damage.

When the project has reached 50% completion, as determined by Metro, Metro shall have the right but not the obligation to allow the contractor to request payment for 98% of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if off site storage is approved in writing by the Metropolitan Government), less the total amount of previous payments received from the Metropolitan Government. When the project reaches substantial completion, the contractor may request payment for ninety eight percent (98%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (etc. as described above) less the estimated amount described in section 10 (I) below for

(liquidated damages, punch list items, pending claims, defective and non conforming work, etc.)

As a condition precedent to payment, the Contractor shall also furnish to the Metropolitan Government properly executed waivers of lien or other claims, in a form acceptable to the Metropolitan Government, from all subcontractors, materialmen, suppliers or others having lien or other claim rights, wherein said subcontractors, materialmen, suppliers or others having lien or other claim rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project. Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract and that the Contractor knows of no reason why payment should not be made as requested. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the Metropolitan Government has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work, materials and equipment included in such payment shall be vested in the Metropolitan Government. The Metropolitan Government shall make every attempt to make payment to the Contractor within thirty (30) days following the submission of a Payment Request, in form acceptable to the Metropolitan Government. The amount of each such payment shall be the amount specified in this paragraph less such amounts, if any, otherwise owing by the Contractor to the Metropolitan Government or which the Metropolitan Government shall have the right to withhold as authorized by this Contract. The Architect/Engineers approval of the Contractors Payment Requests shall not preclude the Metropolitan Government from the exercise of its rights as set forth in Subparagraph 10 (G) (below). In the event the Metropolitan Government rejects a Payment Request for failing to comply with the requirements of this Paragraph, payment shall not be due until thirty (30) days following correction of all noted defects and resubmission by the Contractor.

If the Pay Request is rejected for any bonafide reason, the 30 day period shall start over when an acceptable Pay Request is received.

- (D) Contractor may withdraw retainage by depositing securities with the Metropolitan Government's Treasurer in accordance with the provisions of T.C.A. § 12-4-108.
- (E) When payment is received from the Metropolitan Government, the Contractor shall within fourteen (14) calendar days pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment. In the event the Metropolitan Government becomes informed that the Contractor has not paid a subcontractor, materialman, laborer or supplier as provided herein, the Metropolitan Government shall have the right, but not the duty, to issue future checks and payments to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Metropolitan Government, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Metropolitan Government to repeat the procedure in the future.
- (F) Neither payment to the Contractor, utilization of the Project for any purpose by the Metropolitan Government, nor any other act or omission by the Metropolitan Government shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract.

(G) Notwithstanding any other provision of this Agreement, the Metropolitan Government shall have the right to refuse to make any payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- (1) The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
- (2) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- (3) The Contractor's rate of progress being such that, in the Metropolitan Government's opinion, substantial or final completion, or both, may be inexcusably delayed;
- (4) The Contractor's failure to use Contract funds, previously paid the Contractor by the Metropolitan Government, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- (5) Claims made, pending or known against the Metropolitan Government or its property in relation to this contract or the acts or omissions of the Contractor or any of its subcontractors;
- (6) Loss caused by the Contractor; and,
- (7) The Contractor's failure or refusal to perform any of its obligations to the Metropolitan Government.

In the event that the Metropolitan Government makes written demand upon the Contractor for amounts previously paid by the Metropolitan Government as contemplated in this Subparagraph 10(G), the Contractor shall promptly comply with such demand.

(H) If within forty-five (45) days from the date payment to the Contractor is due, the Metropolitan Government, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days written notice to the Metropolitan Government of the Contractor's intent to cease work.

(I) When Substantial Completion has been achieved, the Contractor shall notify the Metropolitan Government in writing and also shall furnish a listing of those matters yet to be finished. The Metropolitan Government or its designee will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Metropolitan Government will so notify the Contractor in writing and will in the notice set forth the date of Substantial Completion.

If the Metropolitan Government finds that the Contractor's work is not substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Metropolitan Government from any payment then or thereafter due to the Contractor.

Upon Substantial Completion, the Metropolitan Government shall pay the Contractor an amount sufficient to increase total payments to the Contractor to ninety eight percent

(98%) of the Contract Price less any amounts attributable to liquidated damages and deductions contemplated by this Agreement including the total estimated cost or value of: (i) incomplete items including all punch list items, (ii) defective and nonconforming work; and (iii) outstanding or threatened claims against the Metropolitan Government relating to the Project. The estimated value of incomplete and punch list items will be determined by the Metropolitan Government, acting in its sole discretion.

- (J) When the Project is fully complete and the Contractor is ready for a final inspection, it shall notify the Metropolitan Government thereof in writing. Thereupon, the Metropolitan Government or its designee will perform a final inspection of the Project. If the Metropolitan Government confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Metropolitan Government hereunder, the Metropolitan Government will so notify the Contractor. If the Metropolitan Government finds that the Project is not finally complete and is required to repeat all or any part of its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Metropolitan Government from the Contractor's final payment.
- (K) When the Metropolitan Government reasonably believes that Substantial Completion or final completion will be inexcusably delayed, the Metropolitan Government shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Metropolitan Government to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion or Final Completion, or any part thereof, for which the Metropolitan Government has withheld payment, the Metropolitan Government shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.
- (L) Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the Metropolitan Government, in the form and manner required by the Metropolitan Government:
 - (1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment and material suppliers and other third parties in connection with the Project have been paid or otherwise satisfied;
 - (2) Separate releases of claims or claim waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Metropolitan Government or the payment bond;
 - (3) Consent(s) of surety to final payment; and,
 - (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as part of or prior to Project close-out.
- (M) The Metropolitan Government shall, subject to its rights set forth in this Paragraph, make every attempt to make final payment of all sums due the Contractor within forty-five days after notifying Contractor of the achievement of final completion.

11. INFORMATION AND MATERIAL SUPPLIED BY THE METROPOLITAN GOVERNMENT

- (A) The Metropolitan Government shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material known by the Metropolitan Government to be in its possession concerning conditions above or below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being known to be in the possession of the Metropolitan Government and for no other purpose. By furnishing such material, the Metropolitan Government does not represent, warrant or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Metropolitan Government shall also furnish, if appropriate, the legal description of the Project site and any required survey.
- (B) The Metropolitan Government does not represent, warrant or guarantee the accuracy, either in whole, in part, implicitly or explicitly, or at all, of any estimates provided in this Contract or in the Invitation to Proposal for this Contract, and shall have no liability therefor.
- (C) The Metropolitan Government shall obtain all required authorizations, approvals, easements and the like, excluding the building permit and other permits or fees required of the Contractor by this Contract or permits and fees customarily the responsibility of the Contractor.

12. CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the work as required herein, the Metropolitan Government may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Metropolitan Government and shall not proceed further until the cause for the Metropolitan Government's instruction has been corrected, or no longer exists, or the Metropolitan Government instructs that the work may resume. In the event the Metropolitan Government issues such instruction to cease and desist and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurances to the Metropolitan Government that the cause for such instruction will be eliminated or corrected, then the Metropolitan Government shall have the right, but not the obligation, to carry out the work with its own force or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Metropolitan Government may have against the Contractor.

13. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Metropolitan Government, at Contractor's expense:

- (A) All work shall strictly conform to the requirements of this Contract;
- (B) The Contractor shall strictly supervise the work and bear full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor;
- (C) The Contractor hereby warrants that all labor furnished under this Contract shall be competent, that materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality and without defects, and that all work

strictly complies with the requirements of this Contract. Where lesser grades are required by the specifications, the phrase "high quality" shall refer to the spectrum of quality possible within the grade(s) specified. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty;

- (D) The Contractor shall comply with all legal requirements applicable to the work, and shall obtain and pay for all required permits, fees and licenses. Any required permits for sites used for the disposal and/or stockpiling of material must be obtained, and copies must be provided by Contractor to the Metropolitan Government, before the Notice to Proceed will be issued. The Contractor shall be responsible for any costs of moving materials, including illegally stored materials;
- (E) The Contractor shall be responsible for the consequences of any encroachment by the Contractor or any subcontractor or supplier upon private property and all liabilities associated therewith shall be assumed by the Contractor.
- (F) The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The Metropolitan Government reserves the right to require the Contractor to remove any individual from the Project when in the Metropolitan Government's judgment said individual is detrimental to the Project. Key supervisory personnel assigned by the Contractor to this Project are as follows:

Name	Function
_____To Be Determined_____	_____TBD_____

Contractor shall identify with an asterisk ("*") one of the individuals above as being accessible twenty-four hours a day in the event of an emergency, and shall provide the Metropolitan Government with the information to so contact that person. So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Metropolitan Government agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 13(F) as though such individuals had been listed above;

- (G) The Contractor, within Ten (10) calendar days of the commencement of work date, shall submit for approval to the Metropolitan Government the Contractor's Project Schedule for completing (1) design work and (2) construction of the Project. Such Project Schedule shall be in a form acceptable to the Metropolitan Government. The Contractor's Project Schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be submitted for approval to the Metropolitan Government. The Contractor shall comply with the Project Schedule and any revision once same is approved. Strict compliance with the requirements of this Subparagraph 13(G) shall be a condition precedent to payment to the Contractor and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract;
- (H) The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved submittals at the site. All of these items shall be available to the Metropolitan Government at all regular business hours. Upon completion of the work, all of these items shall be finally updated and provided to the Metropolitan Government and shall become the property of the Metropolitan Government;

- (I) The Contractor shall maintain the Project site in a clean condition during performance of the work. Without limiting the foregoing, Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions, resulting from their activities, from surfaces to prevent marring or other damage. Volatile wastes shall be properly stored in approved covered metal containers and removed daily. Prior to substantial completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment. The Contractor shall be responsible for all costs associated with the removal and disposal of waste from Project construction activities, including construction debris, rubble or other materials from site clearing. Wastes shall not be buried or burned on the site or disposed of into storm drains, sanitary sewers, streams or waterways. All wastes shall be removed from the site and disposed of in a manner complying with applicable laws and ordinances.
- (J) Contractor shall provide a working environment that is safe and healthful, complying in all respects to applicable federal, state and local occupational health and safety rules and regulations. The Contractor shall furnish, install, maintain and remove upon Project completion, adequate temporary sanitary facilities (including drinking water and toilets), heating equipment, lights, and other equipment needed to meet regulations promulgated under OSHA and TOSHA
- (K) Contractor shall make reasonable and satisfactory provision for travel on sidewalks, crosswalks, streets, roads, alleys and private ways surrounding the Work. Walkways shall be kept clean and unobstructed. All fences and other structures in the vicinity of the Work shall be protected and, if damaged, shall be repaired or replaced in a timely manner. All trees shall be satisfactorily protected by boxes or other approved methods.
- (L) The Contractor shall be solely responsible for the security and protection of the construction site and all Work, materials, equipment and existing facilities thereon, against vandalism and other damage. All structures and improvements in the vicinity of the work shall be protected by the Contractor. Without limiting the foregoing, Contractor shall provide and maintain property barricades, fences, walkways, signal lights and/or watchmen to properly protect the Work, persons, animals and property against damage and injury.
- (M) Contractor shall be held responsible for any damage to existing structures, Work, materials or equipment relating to Contractor's operations (including actions of Contractor's employees, subcontractors or agents) and shall repair or replace any damaged structures, Work, materials or equipment to the satisfaction of, and at no additional cost to the Metro Nashville Government.
- (N) Contractor shall provide for the proper and lawful drainage of storm water and such water that may be applied or discharged on the site in the performance of the Work including Construction/Staging Areas. Drainage facilities shall be adequate to carry all increased and/or altered current run-off and water retention attributable to Contractor's operations. Run-off along any segment of the site's perimeter shall not be increased by the contractor's operations.
- (O) Unless otherwise indicated in the Contract Drawings, or unless otherwise taken care of by the owner thereof, all utilities and all structures of any nature, whether below or above ground, that may be affected by the work, shall be protected and maintained by the Contractor and shall not be disturbed or damaged by the Contractor during the progress of the work. Should the Contractor disturb, disconnect, or damage any utility or any structure, all expenses of whatever nature arising from such disturbance or the replacement or repair thereof shall be borne by the Contractor;

- (O) At all times relevant to this Contract, the Contractor shall permit the Metropolitan Government to enter upon the Project site and to review or inspect the work without formality or other procedure;
- (P) Contractor shall be responsible for payment, at its own expense, of any and all costs, including moving and/or transportation costs, related to off-site storage of materials;
- (Q) Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the work may affect them, and shall cooperate with the owners in the protection, removal, relocation and replacement of property;
- (R) Contractor shall have made or permit to be made any inspections or testing, in addition to those required in the plans and Specifications, that are required by the Metropolitan Government as appropriate to ensure compliance with the requirements of this Contract.
- (S) The means and methods of construction, including safety precautions and programs related to safety, are the sole responsibility of the Contractor.
- (T) Contractor, and not the Metropolitan Government, shall be responsible for payment of all taxes, including sales and use taxes, that are imposed on Contractor. Contractor understands that the Metropolitan Government is exempt from some taxes, and that Contractor is not entitled to the benefit of, and cannot claim exemption under, any tax exemption to which the Metropolitan Government is entitled.
- (U) Contractor is responsible for obtaining, at his cost, any and all documents required for bidding and for carrying out the Work.

14. HAZARDOUS MATERIALS AND WASTE

Unless otherwise specified in the plans and specifications, it is the responsibility of the Metropolitan Government to remove and dispose of pre-existing hazardous materials or waste that are at the project site. Hazardous materials and waste include asbestos, polychlorinated biphenyl ("PCB"), petroleum, and radioactive material. It is the responsibility of the Contractor to immediately notify the Metropolitan Government as soon as any hazardous materials or waste are discovered.

15. INDEMNITY

The Contractor shall indemnify, defend and hold the Metropolitan Government harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorney fees and expenses, in connection with the Contractor's performance of this Contract. To the extent caused by the Contractor or anyone for whose acts the Contractor may be liable, the Contractor shall be liable for such claims, liability, damage, loss, cost or expense due to sickness, personal injury, disease or death, or the loss or destruction of tangible property (other than the work itself), including loss of use resulting therefrom, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Metropolitan Government.

Metro will not indemnify, defend or hold harmless in any fashion the Contractor from any claims, regardless of any language in any attachment or other document that the Contractor may provide.

16. THE PROJECT ARCHITECT/ENGINEER

The Architect/Engineer (A/E) for this Project is TBD. Project Manager for this Project is Metropolitan Government's assigned agency representative. Contractor shall be notified in writing of any change of the Architect/Engineer or Project Manager. Unless Contractor is

otherwise advised by the Metropolitan Government in writing, the A/E and Project Manager shall act as the Metropolitan Government's representative from the Effective Date of this Contract until final payment has been made.

- (A) Requests for interpretations necessary for the proper execution or progress of the work of shall be submitted to the A/E.
- (B) Requests and recommendations for Change Orders shall be submitted to the A/E. Upon receipt by the Architect, notification will be given to the Project Manager.
- (C) Shop drawings and other submittals shall be submitted to the A/E.
- (D) The Contractor shall be responsible for making requests to the A/E for required inspections; and,
- (E) The duties, obligations and responsibilities of the Contractor under this contract shall in no manner whatsoever be changed, altered, discharged, released or satisfied by any duty, obligation or responsibility of the Architect or Project Manager. The Contractor is not a third-party beneficiary of any contract by and between the Metropolitan Government and the Architect or Project Manager. It is expressly acknowledged and agreed that the duties of the Contractor to the Metropolitan Government are independent of, and are not diminished by, any duties of the Architect or Project Manager to the Metropolitan Government.
- (F) The Contractor shall acknowledge, in writing, the list of contract documents (drawings, specifications, addenda, etc.) provided by the Architect and/or Project Manager.

17. CLAIMS BY THE CONTRACTOR

Claims by the Contractor against the Metropolitan Government are subject to the following terms and conditions:

- (A) All Contractor claims, including any claim for an extension of time, against the Metropolitan Government shall be initiated by a written claim submitted to the Metropolitan Government. Such claim must be received by the Metropolitan Government no later than ten (10) calendar days after the event, or the first appearance of the circumstances causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;
- (B) The Contractor and the Metropolitan Government shall continue their performance hereunder regardless of the existence of any claim submitted by the Contractor;
- (C) The Contractor bears the risk of (1) subsurface or otherwise concealed physical conditions which do not differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in Contract, excavations and other subsurface construction activity shall be unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructures, and (2) unknown physical conditions which do not differ materially from those ordinarily found to exist and are generally recognized as inherent in construction activities of the character provided for in the Contract, and (3) the location of utilities. No change shall be made in the Contract Price as a result of the foregoing risks borne by the Contractor. Changes in the Contract Price may be made, pursuant to Paragraph 19, if increased costs will result from risks not borne by the Contractor, including conditions that require redesign in order for the Project to be completed.

- (D) In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Metropolitan Government therefor the Contractor shall strictly comply with the requirements of Subparagraph 17(A) above and such claim shall be made by the Contractor before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation;
- (E) In connection with any claim, not covered by change order, by the Contractor against the Metropolitan Government for compensation in excess of the Contract Price, any liability of the Metropolitan Government for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Metropolitan Government shall not be liable to the Contractor for claims of third-parties including subcontractors; and,
- (F) In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission of the Metropolitan Government or someone acting in the Metropolitan Government's behalf, or by Metropolitan Government-authorized Change Orders, unusually bad weather not reasonably anticipated, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by the Metropolitan Government upon the written claim of the Contractor to the Metropolitan Government. A task is critical within the meaning of this Subparagraph 17(F) if, and only if, said task is on the critical path of the Project Schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of Subparagraph 17(A) above. If the Contractor fails to make such claim as required in this Subparagraph 17(F), any claim for an extension of time shall be waived. Further, extensions of time shall be Contractor's sole remedy for any and all delays. No payment or compensation of any kind shall be made to Contractor for damages because of hindrance in the orderly progress of the Work or delay from any cause in the progress of the Work, whether such hindrances or delays are avoidable or unavoidable. Contractor expressly agrees not to make, and hereby waives, any claim for damages on account of any delay, obstruction or hindrance attributable to any cause whatsoever and agrees that Contractor's sole right and remedy in the case of any delay, obstruction or hindrance, shall be an extension of the time fixed for completion of the Contract.
- (G) For purposes of this Paragraph, "Bad Weather Day" means a day during the Project in which the weather actually prevents or substantially impairs the Critical Path work activities scheduled for that day and one or more of the following also occurs: (i) the maximum daytime temperature is less than 20 degrees or more than 95 degrees Fahrenheit; (ii) the cumulative rainfall from 6:00 AM until 6:00 PM exceeds 1 inch (or the liquid equivalent in the case of ice or snow); or (iii) Metropolitan Public Schools are closed as of noon on account of weather. Contractor's schedule includes (TBD) Bad Weather Days anticipated for Work lost and inefficiency on account of suboptimal weather conditions. Contractor shall not be entitled to any adjustment in Contract time on account of Bad Weather Days unless the total number of Bad Weather Days occurring during the Project exceeds the anticipated number set forth herein. Temperatures and precipitation totals used in connection with this Paragraph shall be those reported by the National Oceanic and Atmospheric Administration.

18. SUBCONTRACTORS

Upon execution of this Contract, the Contractor shall identify to the Metropolitan Government, in writing, any subcontractor not previously identified on the Project. The Metropolitan Government shall, in writing, state any objection the Metropolitan Government may

have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the Metropolitan Government objects. Should a proposed subcontractor that was listed when Contractor's Proposal was submitted (this sentence does not apply to subcontractors listed after that time) be disapproved, and the Contractor provides proof that the replacement subcontractor will charge contractor a higher price than the disapproved subcontractor, then the Contract Price may be adjusted at a rate equal to the difference between the price charged contractor by the new subcontractor and the price charged by the disapproved subcontractor.

Failure of the Metropolitan Government to object to the subcontractor shall not impose on the Metropolitan Government any liability or responsibility for the performance or character of said subcontractor.

All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Metropolitan Government against the Contractor herein, including those rights of Contract termination as set forth in Paragraph 24.

19. CHANGE ORDERS

(A) Changes to the work within the general scope of this Contract may be ordered by Change Order, Change Authorization, or Field Authorization and must be on the Change Order, Change Authorization, or Field Authorization documents attached. In addition, the Metropolitan Government may order minor changes--those that do not involve a change in the Contract Price and do not involve a change in the time for the Contractor's performance--that the Metropolitan Government deems necessary for performance of and are consistent with the intent of this Contract. The Contractor shall proceed with any such change(s).

(A) Field Authorizations:

- (1) Class I--routine--any in-scope change that does not exceed the field allowance described below.
- (2) Class III--urgent--delay in progress could be financially detrimental to the Metropolitan Government, i.e., crews and equipment on site being held up due to overrun on an item (gravel, pavement, remobilization, et cetera).
- (3) Class IV--emergency--this is defined as any needed action that if not performed could result in jeopardizing the safety of the general public or result in property damage.

(B) Change Authorizations:

- (1) Class II--any change that is considered out-of-scope or exceeds in-scope field allowance on a single occurrence.
- (2) Whenever the amount of the Field Authorization(s) equal the Field Allowance, a Change Authorization will be prepared. The Purchasing Agent may then authorize additional Field Authorizations until the Field Allowance is again equaled, at which time another Change Authorization must be submitted, and approval for additional Field Authorizations must be obtained.

(C) Field Allowance:

ORIGINAL CONTRACT PRICE

FIELD ALLOWANCE*

0 to \$ 999,999.99	\$ 20,000.00 or 5.0% of Original Contract Price, whichever is greater.
\$ 1,000,000.00 to \$ 1,999,999.99	\$ 50,000.00
\$ 2,000,000.00+ * cumulative	3.0% of Original Contract Price

The above amounts may vary, at Metropolitan Government's discretion, for future procurements.

(D) Change Orders

- (1) Change Orders shall be prepared whenever the change does not meet the criteria for a change to be ordered by the Architect/Engineer, for Field Authorizations, or for Change Authorizations.
- (2) Change Orders shall be prepared when the cumulative total of Change authorizations equal ten percent (10%) of the contract price if the price is less than one million dollars (\$1,000,000.00) or five percent (5%) of the Contract Price if the price is one million dollars (\$1,000,000.00) or more (as provided in Metropolitan Government Mayoral Administrative Order 91-01).
- (3) Prior to final payment, a Change Order shall be prepared that reflects all changes to the Contract Price, whether resulting from Field or Change Authorizations or bonus payments that are not already reflected in a Change Order. Change Orders are not required for withholdings by the Metropolitan Government that are authorized under this contract.

(E) Field Authorizations, Change Authorizations and Change Orders shall be prepared by the Architect/Engineer or the Metropolitan Government.

(F) Changes to the Contract Price shall be determined as follows:

- (1) If unit prices that apply to the work are included in the Contract, the unit prices shall be used;
- (2) If there are no unit prices in the Contract that apply to the work, then the applicable benchmark pricing for the Metropolitan Government area, as established in RS Means, shall be used; and,
- (3) If there is no benchmark pricing that applies to the work, then the change in the Contract Price shall be derived by determining the actual costs incurred or savings achieved, resulting from the revision in the work. Such reasonable actual costs or savings shall include a component for direct jobsite overhead and profit but shall not include home-office (including non-job site and administrative costs) overhead or other indirect costs or components. Any such costs or savings shall be documented in the format and with such content and detail as the Metropolitan Government or the Architect/Engineer requires. Unless otherwise approved by the Metropolitan Government, the Contractor is allowed the lesser of 15%, or the percentage used in Contractor's base bid for combined overhead and fee, on Change Orders.
- (4) For deductive Change Orders, the Contractor shall return fee, calculated on the amount of savings at the same percentage as the base bid. No overhead costs shall be returned as part of deductive Change Orders, unless the Project duration

is significantly shortened as a result of the deductive Change Orders, in which case the amount of overhead costs to be returned shall be determined by negotiations between Metropolitan Government and the Contractor.

- (G) The performance of work pursuant to a Field Authorization or Change Authorization and execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work and this Contract as thus amended, including the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Metropolitan Government for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order; and,
- (H) The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Metropolitan Government that the surety has been notified of and consents to such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

20. RESERVED

21. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

- (A) In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Metropolitan Government, such work shall be uncovered and displayed for the Metropolitan Government's inspection upon request and shall be reworked at no cost in time or money to the Metropolitan Government.
- (B) If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph 21(A) above, it shall, if directed by the Metropolitan Government, be uncovered and displayed for the Metropolitan Government's. If the uncovered work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such work shall be borne by the Metropolitan Government. Otherwise, such costs shall be borne by the Contractor.
- (C) The Contractor shall, at no cost in time or money to the Metropolitan Government, correct work rejected by the Metropolitan Government as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Metropolitan Government for all testing, inspections and other expense incurred as a result thereof.
- (D) In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work without additional compensation for a period of twelve (12) months following Final Completion upon written notice from the Metropolitan Government.
- (E) The Metropolitan Government may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Metropolitan Government for the acceptance of the defective or nonconforming work, the Contractor shall, upon written demand from the Metropolitan Government, pay the Metropolitan

Government such remaining compensation for accepting defective or nonconforming work.

22. TERMINATION BY THE CONTRACTOR

If the Metropolitan Government repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Metropolitan Government. In such event, the Contractor shall be entitled to recover from the Metropolitan Government as though the Metropolitan Government had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 24(A) below.

23. THE METROPOLITAN GOVERNMENT'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

- (A) The Metropolitan Government shall have the right at any time to direct the Contractor to suspend the performance, or any designated part thereof, for any reason whatsoever, or without reason. If any such suspension is directed by the Metropolitan Government, the Contractor shall immediately comply with same and shall demobilize as directed by the Metropolitan Government.
- (B) In the event the Metropolitan Government directs a suspension of performance under this Paragraph 23, through no fault of the Contractor, the Metropolitan Government shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:
 - (1) demobilization and remobilization, including such costs paid to subcontractors;
 - (2) preserving and protecting work in place; and
 - (3) storage of materials or equipment purchased for the Project, including insurance thereon;

24. TERMINATION BY THE METROPOLITAN GOVERNMENT

The Metropolitan Government may terminate this Contract in accordance with the following terms and conditions:

- (A) The Metropolitan Government may, for any reason whatsoever, terminate performance or any designated part thereof under this Contract by the Contractor for convenience. The Metropolitan Government shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall take such action as the Metropolitan Government may direct, for the protection, preservation and/or return of the property related to this Contract which is in the possession of the Contractor and in which the Metropolitan Government has or may acquire an interest. The Contractor shall also terminate outstanding orders and subcontractors. The Contractor shall settle the liability and claims arising out of the termination of subcontractors and orders. The Metropolitan Government may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Metropolitan Government or its designee. The Contractor shall transfer title and deliver to the Metropolitan Government such completed or partially completed work and materials, equipment, parts, fixtures,

information and contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

- (1) The Contractor shall submit a Termination Claim to the Metropolitan Government specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Metropolitan Government. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Metropolitan Government shall pay the Contractor an amount derived in accordance with Subparagraph (3) below;
- (2) The Metropolitan Government and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
- (3) Absent agreement to the amount due to the Contractor, the Metropolitan Government shall pay the Contractor the following amounts:
 - (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would not have profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and,
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 24(A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 24(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- (B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Metropolitan Government, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of the materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Metropolitan Government of completing the work, including all costs and expenses of every nature incurred, has been deducted by the Metropolitan Government, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Metropolitan Government for such cost. This obligation for payment shall survive the termination of this Contract. In the event the employment of the Contractor is terminated by the Metropolitan Government for cause pursuant to this Subparagraph 24(B) and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for

Convenience under Subparagraph 24(A) and the provisions of Subparagraph 24(A) shall apply.

- (C) Should funding for this Contract be discontinued, the Metropolitan Government shall have the right to terminate the Contract or any designated part thereof upon written notice to Contractor. When terminated for unavailability of funds, the Contractor shall be compensated in accordance with the provisions described in Paragraph 24 (A)(1) through (3).

25. INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements attached hereto and incorporated herein by reference. The required certificate(s) of insurance must be provided by the Contractor and approved by the Metropolitan Government before the Notice to Proceed can be issued and before the Contractor can commence performance for any future projects.

26. SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Metropolitan Government in the forms attached hereto. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Orders executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed adjusted by like amount. The performance and payment bonds furnished by the Contractor shall be in a form suitable to the Metropolitan Government and shall be executed by a surety, or sureties, licensed to do business in Tennessee and reasonably acceptable to the Metropolitan Government. Bonds shall be accompanied by a power of attorney indicating that the person executing the bond is doing so on behalf of the surety. The power of attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The power of attorney shall show the date of appointment of the attorney-in-fact and that the appointment and powers have not been revoked and remain in effect.

27. PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor shall be made available to the Metropolitan Government for inspection and copying upon written request by the Metropolitan Government. Furthermore, said documents shall be made available, upon request by the Metropolitan Government, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the cost of construction by the Contractor, including all subcontracts and payroll records of the Contractor and Subcontractors.

The Contractor shall maintain and protect these documents for no less than four (4) years after final completion of the Project or for a longer period of time as may be required by law or good construction practice. Contractor shall also retain, for no less than four (4) years after final completion of the Project, all working papers and other documents utilized by Contractor in preparing the Proposal for the Contract. In the event of litigation, said working papers and other

documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

28. APPLICABLE LAW/VENUE

The validity, construction and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of, and the State of Tennessee. Any action concerning this contract shall be brought in a court in the State of Tennessee

29. SUCCESSORS AND ASSIGNS

The Contractor shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the Metropolitan Government. Subject to the provisions of the immediately proceeding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

30. INTELLECTUAL PROPERTY

- (A) Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against the Metropolitan Government to the extent that it is based on a claim that the products or services furnished infringe a United States--federal or state--copyright, patent or trademark. Contractor shall further indemnify and hold harmless the Metropolitan Government against any award of damages and costs made against the Metropolitan Government by a final judgment of a court of last resort in any such suit. The Metropolitan Government shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent. The Metropolitan Government reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon the Metropolitan Government unless approved by the Metropolitan Government's Department of Law Settlement Committee and, where required, the Metropolitan Government's Metropolitan Council.
- (B) If, in Contractor's opinion, the products or services furnished under this Contract are likely to, or do become, the subject of a claim of infringement of a United States (federal or state) copyright, patent or trademark, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - (1) Procure for the Metropolitan Government the right to continue using the products or services.
 - (2) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the Metropolitan Government, so that they become non-infringing.
 - (3) Remove the products or discontinue the services and cancel any future charges pertaining thereto.

Provided, however, that Contractor will not exercise option (B)(3) until Contractor and the Metropolitan Government have determined that options (B)(1) and (B)(2) are impractical.

- (C) Contractor shall have no liability to the Metropolitan Government, however, if any such copyright, patent or trademark infringement or claim thereof is based upon or arises out of:
- (1) The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.
 - (2) The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
 - (3) The claimed infringement of any copyright, patent or trademark in which the Metropolitan Government has any direct or indirect interest by license or otherwise, separate from that granted herein.

31. NOTICES

Notices to the Metropolitan Government shall be sent to:

Attention: TBD Departments
Department:
Address:

and to:

Jeff L. Gossage C. P. M.
Assistant Finance Director
Purchasing and Contract Management
222 Third Avenue North, Suite 601
Nashville, TN 37201

Notices to Contractor shall be sent to:

Attention: _____
Contractor: _____
Address: _____

Contractor designates the following as the Contractor's agent for services of process and will wave any objection to services of process if process is served upon this agent:

Designated Agent; _____
Attention _____
Address; _____

32. METROPOLITAN GOVERNMENT PROPERTY

Any Metropolitan Government property, including but not limited to books, records and equipment, that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to Metropolitan Government by Contractor upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be Metropolitan Government property.

33. MODIFICATION OF CONTRACT

This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

34. PARTNERSHIP/JOINT VENTURE

Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

35. WAIVER

No waiver of any provision of this Contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

36. ENTIRE CONTRACT

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

37. FORCE MAJEURE

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any unforeseeable and unavoidable act of God, storm, fire, casualty, unforeseeable work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

38. SEVERABILITY

Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract, if the purposes of the Contract can reasonably be fulfilled.

39. DISPUTE RESOLUTION

The parties agree to make a reasonable effort to informally resolve, among themselves disputes that may arise during the performance of this Contract in a timely, professional and non-adversarial manner. In an effort to limit any disputes, the parties agree to periodically meet and evaluate the progress of performance under this contract. Any agreements reached by the parties utilizing these informal dispute resolution procedures are not binding unless the agreement is contained in an amendment to the contract that is executed in accordance with Paragraph 19. The Metropolitan Government and the Contractor may exercise such rights or

remedies as either may otherwise have with respect to any dispute. Nothing in this provision shall create any right of either party to alternative dispute resolution, arbitration, mediation, or partnering.

40. CONTRACTOR'S LICENSE

Contractor swears, affirms and represents that it has complied with all the provisions of the Contractors Licensing Act of 1976 of the State of Tennessee, the same being set out in Tennessee Code Annotated, 62-6-101 et seq., and that it is licensed by the State Board of Licensing Contractors. Said Board is authorized to receive complaints relative to Contractor's professional conduct. Its license number is _____, the date of expiration is ____/____/20____, and that part of the classification applying to this agreement is _____.

41. AMERICANS WITH DISABILITIES ACT

"Contractor shall assure to Metro that all services provided through this contract shall be completed in full compliance with the Americans with Disabilities Act ("ADA") and Architectural and Transportation Barriers Compliance Board, Federal Register 36 CFR Parts 1190 and 1191, Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; proposed rule, published in the Federal Register on July 23, 2004, as has been adopted by Metro.

42. ADDITIONAL NON-DISCRIMINATION

Notwithstanding any other provision of this Contract, no person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Metro's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Metro or in the employment practices of Metro's Contractors. Accordingly, all Proposers entering into contracts with Metro shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

43. ATTORNEY FEES

Contractor agrees that, in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event Metro prevails in such action, Contractor shall pay all expenses of such action incurred at any and all stages of the litigation, including costs and reasonable attorney fees for Metro.

44. SIGNATURES

IN WITNESS WHEREOF, the Metropolitan Government and the Contractor have hereunto set their hands and seals on the separate Signature Sheets attached hereafter (pages 48 and 49) as of the Effective Date, which date is the day all necessary officials of each party have executed this Contract, the signature of the Contractor has been notarized and this Contract has been filed in the Office of the Metropolitan Clerk and assigned a Metropolitan Contract Number.

FOR THE CONTRACTOR

NAME OF CONTRACTOR:

Signature; Chief Executive Officer

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

The undersigned, a Notary Public in and for the above State and County, does state that _____ did personally appear before me and signed this Contract and swore or affirmed that the statements of the Contractor are true and that he or she has the necessary authority to execute this Contract on behalf of the Contractor.

Notary Public

SEAL

My Commission Expires: _____

FOR THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY

RECOMMENDED BY:

Jeff L. Gossage C. P. M.
Assistant Finance Director
Purchasing and Contract Management

APPROVED AS TO THE
AVAILABILITY OF FUNDS:

FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:

Department of Metropolitan Finance

DATE: _____

APPROVED AS TO FORM
AND LEGALITY:

Metropolitan Attorney

APPROVED AS TO RISK
AND INSURANCE:

Risk Management

Fund & Business Unit

INSURANCE REQUIREMENTS

For Contractors Doing Business with The Metropolitan Government of Nashville and Davidson County (these Insurance Requirements supersede and replace all Insurance Requirements contained elsewhere in these documents).

1. GENERAL CONSIDERATIONS

It is a requirement of the Metropolitan Government of Nashville and Davidson County (Metropolitan Government) that Contractors must agree to the indemnity obligations set forth in the General Contract. The Metropolitan Government reserves the right to participate in the defense of any claim or action that is brought against the Metropolitan Government.

To insure compliance with this policy, the METROPOLITAN GOVERNMENT requires each Contractor to carry adequate insurance coverage with a company or companies acceptable to said METROPOLITAN GOVERNMENT. The METROPOLITAN GOVERNMENT fully understands that no insurance policy of any company licensed to do business in the State of Tennessee is all encompassing in coverage or limit of liability.

2. INSURANCE REQUIREMENTS

During the performance and up to the date of final payment, the Contractor must effect and maintain insurance hereafter checked as required. The first (primary) one million dollars (\$1,000,000) of Bodily Injury and Property Damage limits must be a company or companies licensed to do business in Tennessee. The excess over one million dollars (\$1,000,000) may be with either a licensed or non-admitted company provided the non-admitted company is: (1) listed as approved to do business in Tennessee by the Tennessee Department of Insurance, (2) has a Best financial rating of A minus or better, with a policyholder surplus of Roman Numeral X or better, and (3) otherwise acceptable to the Department of Law of The Metropolitan Government of Nashville and Davidson County.

All Comprehensive General Liability policies, and Comprehensive Automobile Liability policies shall be endorsed to include the METROPOLITAN GOVERNMENT as an Additional Insured and this shall be noted on the Certificates of Insurance.

All policies must be of the standard form of coverage as filed with and approved by the Commissioner of Insurance for the State of Tennessee or otherwise authorized. The Contractor shall not commence work under the Contract until it has obtained all insurance coverages required hereafter and such insurance has been approved by the Department of Law of The Metropolitan Government of Nashville and Davidson County.

Check if Required:

GENERAL LIABILITY

(X) a. Comprehensive (Commercial) General Liability:

The Contractor shall have and maintain during the life of the Contract such Bodily Injury Liability Insurance and Property Damage Liability Insurance as shall protect Contractor from claims for Bodily Injury and Property Damage arising from the Contractor's operations under the Contract, whether such operations are conducted by Contractor or by any subcontractor of said Contractor. The Bodily Injury Liability Insurance shall pay on behalf of the Insured all sums up to the limits provided by the policy which the Insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at anytime resulting therefrom, sustained by a person other than an employee of the Contractor and caused by an occurrence. The Property Damage Liability Insurance shall pay on behalf of the Insured all sums

up to the limits provided by the policy which the Insured shall become legally obligated to pay as damages because of injury to, or destruction of property, including the loss of use thereof, caused by any occurrence.

() This policy shall cover liability for damage to property caused by blasting or explosion or collapse, or structural injury to any building or structure, or damage to any property below the surface of the ground (Explosion, Collapse and Underground Damage) as applicable.

() b. Premises and Operations Liability:

The Contractor shall have and maintain during the life of the Contract such Premises and Operations Liability Insurance as shall protect Contractor and the METROPOLITAN GOVERNMENT from liability resulting from the operations under the Contract by the Contractor.

() c. Products and Completed Operations Liability:

The Contractor shall provide such Products and Completed Operations Insurance as shall protect Contractor from liability arising out of the Contract and including those products involved in the work for which Contractor is responsible.

() d. Broad Form Contractual Liability:

The Contractor shall have and maintain during the life of the Contract such Contractual Liability Insurance as shall protect Contractor from liability resulting from the execution of the Contract by the Contractor. If coverage is not provided on the blanket form basis, a copy of the policy or endorsement providing coverage for contractual liability assumed by the Contractor under its Contract with the METROPOLITAN GOVERNMENT must be attached to the Certificate of Insurance.

AUTOMOBILE LIABILITY

(X) e. Comprehensive (Business) Automobile Liability (all owned, hired and non-owned):

The Contractor shall have and maintain during the life of the Contract such Comprehensive (Business) Automobile Liability (all owned, hired, and non-owned) Insurance as shall protect the Contractor for claims arising out of the ownership, operation, maintenance and use of land motor vehicles and trailers intended for use therewith.

WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY

(X) f. The Contractor shall have and maintain during the life of the Contract Worker's Compensation Insurance conforming with the requirements of the laws of Tennessee and (if the box is checked) the Jones Act () and the Longshoremen's and Harbor Workers' Compensation Act (). In case of any employee or employees are not covered by such laws of Tennessee or the Jones Act or the Longshoremen's and Harbor Workers Compensation Act, the Contractor shall provide Employers' Liability coverage for the protection of such employee or employees.

PROPERTY DAMAGE INSURANCE

() g. Builder's Risk Insurance

The Contractor shall have and maintain during the life of the Contract such Property Insurance upon Contractor's entire work at the site to the completed value thereof. This

insurance shall protect the METROPOLITAN GOVERNMENT, as its interest may appear in the work, and shall insure against the perils of fire and extended coverage, and shall include "all risk" insurance for the physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief. All Risk insurance may contain the normal exclusions such as, but not limited to, flood, earthquake, mysterious disappearance, inherent vice, war and nuclear. If the METROPOLITAN GOVERNMENT requires coverage for flood or earthquake, specific requirements concerning same are set out hereafter in these specifications. If the Property Insurance contains a co-insurance provision, the Contractor shall be responsible for the amount of insurance satisfying the co-insurance amount so as to make the co-insurance clause inoperable. If not covered otherwise, the Contractor shall have and maintain during the life of the Contract similar Property Insurance on portions of the work stored off the site or in transit when such portions of the work are to be included in any payment.

() h. Other Insurance:

3. ADDITIONAL INSURANCE REQUIREMENTS:

The Certificate of Certificates of Insurance shall contain the following provisions, to-wit:

The coverage provided shall not be canceled, reduced in coverage, or allowed to lapse unless and until The Metropolitan Government of Nashville and Davidson County receives at least thirty (30) days advance written notice of same. Said written notice must be delivered to the Director, Insurance and Safety Division, at his office shown as the address of the Certificate Holder below.

() If this box is checked, each of the said policies set out above may contain a deductible feature not in excess of \$_____ per occurrence. If a deductible feature is provided in a policy or policies, the Contractor shall be liable for said amount of any claim or loss.

4. The word "Contract" above means the AGREEMENT between the METROPOLITAN GOVERNMENT and CONTRACTOR for this PROJECT. The word "Contractor" means the successful BIDDER who is the CONTRACTOR for this PROJECT. The limit "Ea. Person" is the monetary limit applied to each person injured in a given occurrence. The limit "Ea. Occur." is the limit of the total liability for claims, subject to the limit for "Ea. Person," from one common cause. The word "Aggregate" is the limit of the total liability for all damage of the specified coverage for each annual term of the insurance policy.

5. The CONTRACTOR is required to have a CERTIFICATE of INSURANCE properly executed by an insurance company or insurance companies authorized to do business in the State of Tennessee.

6 MINIMUM LIMITS OF COVERAGE - Coverage shall be at least to the following minimum limits. If the Contractor has or obtains primary and umbrella excess policies, there shall be no gap between them.

GENERAL LIABILITY

(a)	Comprehensive General Liability		
	Bodily Injury	\$ 1,000,000	Ea. Occur.
		\$ 1,000,000	Aggregate Per Project
	Property Damage	\$ 1,000,000	Ea. Occur.
		\$ 1,000,000	Aggregate Per Project
	(or)Combined Single Limit	\$ 1,000,000	Per Occur. Per Project
(b)	Premises and Operations Liability	same limits as in (a) above.	

- | | | |
|-----|---|------------------------------|
| (c) | Products and Completed Operations Liability | same limits as in (a) above. |
| (d) | Contractual Liability | same limits as in (a) above. |

AUTOMOBILE LIABILITY

- | | | | |
|-----|---|--------------|------------|
| (e) | Comprehensive Automobile Liability (all owned, hired and non-owned) | | |
| | Bodily Injury | \$ 1,000,000 | Ea. Person |
| | | \$ 1,000,000 | Ea. Occur. |
| | Property Damage | \$ 1,000,000 | Ea. Occur. |
| | | \$ 1,000,000 | Aggregate |
| | (or) Combined Single Limit | \$ 1,000,000 | Per Occur. |

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

- | | | | |
|-----|---|------------------|------------|
| (f) | Worker's Compensation
(including compliance with the
Jones Act and Longshoremen's and
Harbor Worker's Act as applicable) | Statutory Amount | |
| | Employer's Liability | \$ 100,000 | Ea. Occur. |

PROPERTY DAMAGE

- | | | |
|-----|--------------------------|------------------------|
| (g) | Builder's Risk Insurance | \$(Value of Structure) |
| (h) | Other Insurance | \$(As Required) |

The following forms are for information only.

**CONTRACTOR'S PAYMENT REQUEST
AND ARCHITECT'S/ENGINEER'S
APPROVAL OF PAYMENT**

This is the Contractor's Payment Request and Architect's/Engineer's Approval of Payment No. _____ in connection with the Contract dated _____ for construction of _____ Project No. _____.

(Insert Description of the Construction Project)

between _____ ("Contractor")

and _____ ("Owner")

for the period ending _____, 20____.

Contract Price (as adjusted, if applicable, through Change Order No. _____) \$ _____

CONTRACTOR'S PAYMENT REQUEST

The Contractor requests payment, as set forth below, in accordance with the terms and conditions of the Contract. The Contractor's breakdown is attached.

The Contractor represents to the Architect/Engineer and the Owner that the quantity of work has reached the level for which payment is requested in accordance with the Schedule of Values, that the work has been properly installed or performed in strict compliance with this Contract, that all persons or entities providing goods or services for the Project for which previous payments were received from the Owner have been paid, that payment in the amount requested is appropriate and that the Contractor knows of no reason why payment should not be made as requested. Contractor waives all claims and the right to make any future claim for additional compensation relating in any way to work performed or delays, hindrances or difficulties experienced to date.

Work completed plus materials and equipment stored to date, derived in conformity with the acknowledged

Schedule of Values \$ _____

Less Retainage of _____ percent (____%) \$ _____

Less Prior Payments \$ _____

Payment Now Requested in the Amount of:..... \$ _____

CONTRACTOR:

Contractor acknowledges that this request is made under oath and that false statements are subject to the penalties for perjury.

(Signature)

State of _____

County of _____

(Title)

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public
My commission expires: _____

ARCHITECT'S/ENGINEER'S APPROVAL OF PAYMENT

In compliance with the above-referenced Contract, and the Architect's/Engineer's separate agreement with the Owner, the Architect/Engineer hereby informs the Owner that the Contractor's Payment Request is approved in the amount of \$_____.

ARCHITECT/ENGINEER:

(Signature)

(Date)

(Title)

OWNERS APPROVAL OF PAYMENT

(Signature)

(Date)

(Title)

CHANGE ORDER NO. _____

OWNER: The Metropolitan Government of Nashville and Davidson County, Tennessee

PROJECT NAME: _____

PROJECT NOS.

CONTRACT NO.:

CONTRACTOR:

DATE: _____

I. DESCRIPTION OF CHANGE ORDER ITEMS INVOLVED

[Attach Change Authorizations; if not applicable, write "NO ATTACHMENTS" below]

ITEM NO.	CHANGE AUTH NO.	DESCRIPTION	ADDITION
REDUCTION			

\$ SUBTOTALS \$ _____

\$ _____ TOTAL \$ _____

II. REASONS FOR CHANGES

III. HISTORY OF NEGOTIATIONS

IV. CHANGE ORDER CONDITIONS

1. All work to be performed under this Change Order shall be carried out in compliance with the Contract Documents included in the preceding description of Change Order Items involved, with the Supplemental Contract Drawings designated as _____, and under the provisions of the Original Contract, including compliance with applicable Specifications for the same type of work.

2. This Change Order, unless otherwise provided herein, does not relieve Contractor from strict compliance with the guarantee provisions of the Original Contract, particularly those pertaining to performance and operation of equipment.

3. Contractor expressly agrees that it will place under coverage of its Performance and Payment Bonds and Contractor's Insurance all work covered by this Change Order. Contractor will furnish to Owner evidence of increased coverage of Contractor's Insurance and the Performance and Payment Bonds for the accrued value of all Change Orders that exceed the Original Contract Price. ATTACH EVIDENCE OF COVERAGE.

4. The costs established under this Change Order are acknowledged as including any and all costs associated with the work described herein and including any and all costs associated with any and all work performed or to be performed by the Contractor which may be affected in any manner by the work described herein. Contractor hereby waives all claims, known and unknown, relating in any way to the work, or the time required for performing the work, associated with this Change Order, including, without limitation, claims relating to the impact of this and other Change Orders on unchanged work and the cumulative effect of this and other Change Orders on Contractor's costs and time of performance.

V. ADJUSTMENTS IN AMOUNT OF CONTRACT

Total Original Amount:	\$
Amount of Previous Change Orders:	\$
Percent of Previous Change Orders:	
Amount of this Change Order Request:	\$
Percent of this Change Order Request:	
Contract Amount including this Change Order:	\$

VI. ADJUSTMENTS IN CONTRACT TIME

Original Contract Time:	_____	Calendar Days
Net (Addition)(Reduction) due to all previous Change Orders:	_____	Calendar Days
Net (Addition)(Reduction) resulting from this Change Order:	_____	Calendar Days
Current Contract Time including this Change Order:	_____	Calendar Days

SUBMITTED AND APPROVED BY:

Contractor

By: _____

Title: _____

RECOMMENDED BY:

Architect/Engineer

By: _____

APPROVED BY:

Director, Dept. of _____

Purchasing Agent**APPROVED AS TO AVAILABILITY OF FUNDS:**

(list of funds below)

Director of Finance (or designee)**APPROVAL AS TO FORM AND LEGALITY:**

Metropolitan Attorney**APPROVED:**

Metropolitan Mayor**ATTEST:**

This the _____ day of _____, 20_____.

By: _____
Metropolitan Clerk

CHG.ORDER FUND NAME AMOUNT	FUND NO.	O.C.	C.I.B. NO.
----------------------------------	----------	------	------------

CHANGE AUTHORIZATION

Project Name: _____	Project Number: _____
Contractor: _____	Contract Number: _____
Field Authorizations Included: _____	Change Request Number: _____
Cost Adjustments: \$ _____	
Scope of Original Project: _____	
CLASS II CHANGE JUSTIFICATION AND PRICE ANALYSIS	
Reason for change: _____	
Description of Change: _____	
Unit Price in Contract? NO <input type="checkbox"/> YES <input type="checkbox"/> If yes, amount: _____	
or	Quotes Received? NO <input type="checkbox"/> YES <input type="checkbox"/> If yes, quote amounts: 1. _____
	2. _____
	3. _____
or	Like Work on Project Number: _____
	Comparison _____ Info: _____
Comments: _____	
COST ADJUSTMENT ANALYSIS	
Original Contract Amount	\$ _____
Cost Adjustment by Previous Change Order(s)	
_____ (____%)	
(Includes Change Order(s) _____, _____, _____, _____)	
Current Contract Amount	\$ _____
Cost Adjustment by Pending Change Order	
\$ _____ (____%)	
(Includes Previously Approved Change Authorization(s) _____, _____, _____, _____)	
(Includes Previously Approved Field Authorization(s) _____, _____, _____, _____)	
Cost Adjustment by this Change Authorization	
\$ _____ (____%)	
Anticipated Contract Amount	\$ _____
Funding Number: _____	
CHANGE REQUEST SOURCE: Department: _____ Date _____ of _____ Request: _____	
Contact Person: _____	Telephone Number: (____) _____ - _____

CHANGE AUTHORIZATION REVIEW: 1st reviewer's initials _____ 2nd reviewer's initials _____

APPROVED (Purchasing Agent): _____ Date: _____

xc: _____ Accounting: _____,

FIELD AUTHORIZATION

Project Name:

Project Number:

Contractor:

Contract Number:

Field Authorizations Included:
Number:

Field Change Request

Cost Adjustments: \$

Scope of Original Project:

REASON FOR CHANGE

Authorization Class: _____ Why?

Reason for Change:

DESCRIPTION OF CHANGE:

PRICE ANALYSIS

Unit Price in Contract? NO [] YES [] If yes, amount: _____

or Quotes Received? NO [] YES [] If yes, quote amounts: 1. _____

2.

3.

or Like Work on Project Number: _____
Comparison

Info:

Comments:

COST ADJUSTMENT ANALYSIS

Original Contract Amount \$

Cost Adjustment by Previous Change Order(s) _____ (____%) (Includes Change Order(s) _____, _____, _____, _____)	\$
Current Contract Amount	\$
Cost Adjustment by Pending Change Order _____ (____%) (Includes Previously Approved Change Authorization(s) _____, _____, _____, _____) (Includes Previously Approved Field Authorization(s) _____, _____, _____, _____)	\$
Cost Adjustment by this Field Authorization _____ (____%)	\$
Anticipated Contract Amount	\$
Funding Number: _____	
CHANGE REQUEST SOURCE: Department: _____ Date of Request: _____	
Contact Person: _____ Telephone Number: (____) _____ - _____	
FIELD AUTHORIZATION REVIEW: 1st reviewer's initials _____ 2nd reviewer's initials _____	
APPROVED (Department Representative): _____ Date: _____	

xc: Accounting: _____, _____